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ABSTRACT

This chapter reviews 1982 cases related to school property. Cases involving citizen efforts to overturn school board decisions to close schools dominate the property chapter, and courts continue to uphold school board authority to close schools, transfer students, and sell or lease the buildings. Ten cases involving detachment and attachment of school district land are reported, continuing a trend in increased litigation in school land transfer. Litigation related to school bond referenda and zoning issues is discussed and precedes an expanded section on building design and construction. Besides an increased coverage of cases involving competitive bidding, roofs and ceilings, design and performance, contractor claims, and arbitration, new topics reported include construction funding, prevailing wages, and sales tax on materials. A review of cases related to higher education facilities concludes the chapter. (Author/MJL)

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PROPERTY

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* Professor Piele wishes to acknowledge the assistance of Steven M. Pitt in the preparation of this chapter.

7.0 INTRODUCTION

With many school districts in this country still experiencing declining enrollments, cases involving citizen efforts to overturn school board decisions to close elementary and secondary schools again dominate this year's property chapter. And as in previous years, the courts without exception continue to uphold school board authority to close schools, transfer students, and sell or lease the buildings.

Ten cases dealing with detachment and attachment of school district land—nearly half of which are from Nebraska—are reported this year, continuing the trend in increased litigation involving school land transfer issues first reported in 1980.

Finally, this year's chapter includes a significant expansion in the reporting of building design and construction cases. Besides an increased coverage of cases involving competitive bidding, roofs and ceilings, design and performance, construction claims, and arbitration, new topics reported for the first time this year include construction funding, prevailing wages, and sales tax on materials. The expansion of the building and design section is due almost entirely to the efforts of Professor Goldblatt.

7.1 GENERAL SCHOOL BOARD AUTHORITY OVER SCHOOL PROPERTY MATTERS

In Pennsylvania, the Wallingford-Swarthmore school board granted permission for the erection of lights at its athletic field. Neighbors filed a complaint in equity to enjoin the board from having any work done on the lights. The trial court, after concluding that no nuisance would occur if the lights were erected, nevertheless imposed restrictions and conditions regarding their use. The commonwealth court vacated the decree. "When and if a nuisance in fact develops after the lights are erected and in use, of course, a court of equity can and should intervene."[1]

Another Pennsylvania school board attempted to impose a tax upon home building permits, in lieu of raising the real estate tax millage. The court found the levy to be "unreasonable" because of the exclusionary impact the measure would have against newcomers to the district. Although there was no evidence of conscious exclusionary intention by the board, the court found the effect of the tax to be against judicial policy as a matter of substantive due process.[2]

In New York, the Glens Falls school board voted to convert an elementary school to a middle school and provide for construction of a new addition. When the trial court annulled the resolutions, the board appealed. The supreme court, appellate division, ruled that city planning approval was not required, but an environmental impact statement was due prior to passage of the resolutions.[3]

In Louisana, the Franklin parish school board leased some land in exchange for the land being cleared and drained. The court of appeals found that the board failed to comply with either the public bid or

1. Board of School Dirs. v. Kassab, 450 A.2d 282 (Pa. Commw. Ct. 1982).
2. Heisey v. Elizabethtown Area School Dist., 445 A.2d 1344 (Pa. Commw. Ct. 1982).
3. City of Glens Falls v. Board of Educ., 453 N.Y.S.2d 891 (N.Y. App. Div. 1982).

lease law requirements of a performance bond and written specifications and declared the lease null and void, as well as entitling the lessee to recover its expenses for work done on the land.[4]

A North Carolina school district abandoned the property for school purposes which had been granted to it and the district then attempted to sell the property. The heirs of the original grantor brought action claiming that the grant was of less than fee simple title and that they retained a right of entry for condition broken, since a clause in the deed provided that if the site were abandoned for school purposes it would first be offered for sale to vendor or his heirs. The trial court and the court of appeals agreed that the habendum clause, the granting clause and the warranty were consistent with an intent to pass fee simple title and a rule of construction required other clauses, repugnant to the conveyance, be rejected.

The court further held that even if the clause were given effect, it did not preserve a right of action for grantor's heirs since it did not give an unconditional right to re-enter or to bring action to terminate an otherwise fee simple estate.[5]

7.2 DETACHMENT AND ATTACHMENT OF LAND

A freehold board granted a petition for the transfer of land from one district to another in Nebraska. Two school districts appealed the transfer to the district court which reversed the board's decision after a hearing on the merits.

In their appeal to the state supreme court the appellants challenged the school district's standing in initiating the original suit. Although prior cases admittedly held that districts had no legal interest in maintaining district boundaries and hence had no standing, the school district argued that recent statutory changes must be read to infer such standing. The court disagreed, finding that the lack of pertinent and specific changes in the applicable law indicated a lack of legislative intention to effect such a change.[6]

The father of a student petitioned to transfer property from one school district to another. The board approved the transfer and the district court affirmed on the appeal of certain taxpayers.

The Nebraska Supreme Court was required, at the de novo trial, to determine whether all of the statutory requirements for transfer were complied with, and then whether the transfer was in the best educative

4. Davis v. Franklin Parish School Bd., 412 So. 2d 1131 (La. Ct. App. 1982).
5. Peele v. Wilson Cty. Bd. of Educ., 289 S.E.2d 890 (N.C. Ct. App. 1982).
6. Hilbers v. School Dist. Nos. 26 and 94, 318 N.W.2d 265 (Neb. 1982).

interest of the child. The court affirmed the district court decision, holding that where the purpose is to keep the child in the same school district, with the same curriculum and the same assocations, the best educative interests of the child are being met by the transfer.[7]

When a freeholders board failed to act on a requested transfer of property from one district to another, the petitioner appealed to the district court which entered summary judgment granting the transfer. Taxpayers appealed to the Nebraska Supreme Court alleging that the statute which required that the districts "adjoin," means that the boundaries must touch. They argue that they do not touch in this case since they are separated by a river.

The supreme court held that although the term "adjoin" ordinarily means touching or having a common boundary, that it may also include a situation where the boundaries are separated only by a streambed which is not part of any district.[8]

Another Nebraska school district sought to transfer land to another district, not contiguous to the property. Taxpayers challenged the transfer, claiming that the applicable state statute concerning a "change of boundaries" should be interpreted to limit such property transfers to a contiguous district.

Reviewing other state statutes to determine the legislature's intent, the court found that the boundaries of school districts were not restricted to contiguous areas of land within one set of boundary lines. The transfer of land from one district to another is thus not limited by statute to land which is contiguous to the common boundary between the two districts.[9]

After the circuit court had affirmed a board of school trustees' decision to deny a petition for detachment and annexation, the Appellate Court of Illinois reversed the decision. The appellate court ruled that (1) the loss of revenue by a school district is not enough to prevent redistricting unless the maximum rates were being levied, (2) an alleged safety factor of unlighted streets was not supported by evidence, and (3) in every other respect the evidence clearly showed the people living in the area would benefit by granting the petition. The court emphasized that the social, recreational and business associations for the children and their parents would be disrupted by failure to approve the petition. As a result the court held that denial of the petition was reversible as "contrary to the manifest weight of the evidence."[10]

7. Hoffman v. Allen, 317 N.W.2d 91 (Neb. 1982).
8. Schilke v. Walkenhorst, 316 N.W.2d 294 (Neb. 1982).
9. Heartwell School Dist. R-4 v. Jepsen, 319 N.W.2d 68 (Neb. 1982).
10. Granfield v. Regional Bd. of School Trustees of Bureau Cty., 439 N.E.2d 497 (Ill. App. Ct. 1982).

Residents of another Illinois district petitioned the regional board to detach property from the district and transfer the property to another district. The board granted the petition and the circuit court and appellate courts affirmed the decision on appeal.

The Illinois Supreme Court also affirmed, holding that the board had been justified in considering "whole child" and "community of interest" factors. The "whole child" concept means that the educational welfare of the children of the detached area would be improved through enlargement of their opportunities for participation in various community and school extracurricular programs. Closely related to this is the concept that the detachment area should share an identifiable "community of interest" with the district to be enlarged. The court also held that the regional board's consideration of a school board's announced decision to close one of its schools did not usurp the local board's function. Finally, the court dismissed the district's argument that it would lose substantial amounts of tax revenue, referring to prior case law holding that such loss alone would not prevent redistricting if the maximum rate is not being levied.[11]

The Michigan state board of education ordered the transfer of property from one school district to another without a vote by district electors. The plaintiff school district contended that the issue of detachment should be submitted to the voters even though a Michigan statute in "clear and unambiguous language" requires such a vote only if the valuation of the detached area is more than ten percent of the valuation of the entire district. Although the present transfer would be only 9.2 percent, the plaintiffs claim that a prior transfer of 8.4 percent must be added for a total of 17.6 percent of the district's valuation. The plaintiff school district argued that a literal reading of the statute would circumvent the legislative intent because "what cannot be accomplished directly in one large transfer, without approval of its electors, should not be permitted to occur indirectly through many small transfers."

Although a dissenting justice adopted this cumulative total approach to the ten percent statutory figure and referred to the legislative history of the statute, the majority found that the legislative intent was not clear enough to depart from the statutory language.[12]

After their request for a minor school district boundary change was denied by the district, the plaintiff property owners appealed to the South Dakota state superintendent who ruled in plaintiffs' favor. The district appealed to the circuit court which reversed the superintendent's decision.

11. Board of Educ. of Golf School Dist. No. 67 v. Regional Bd. of School Trustees of Cook Cty., 433 N.E.2d 240 (Ill. 1982).
12. Owendale-Gagetown School Dist. v. State Bd. of Educ., 317 N.W.2d 529 (Mich. 1982).

Citing the court's limited scope of review in the appeal of an administrative decision, the Supreme Court of South Dakota held that neither the circuit court nor the supreme court may substitute its judgment for that of the superintendent. The court reversed the circuit ruling, finding that there were no procedural due process errors at the de novo hearing conducted by the superintendent, that the findings of the hearing were substantiated by evidence in the record and that the decision was not contrary to law, clearly erroneous, arbitrary, capricious, or an abuse of discretion.[13]

A Texas district court held that the annexation of property by a municipal school district from a neighboring district complied with the applicable statute covering the extension of school boundaries. The court of appeals affirmed, ruling that the appellant's basic argument that a required statutory procedure was not followed was based upon an inapplicable statute which was not legislatively intended to govern the extension of municipal school district boundaries. The court also noted that independent school districts had been determined to have no vested right in the territorial boundaries which were originally established, and that the state legislature maintains the authority to establish the means by which district boundaries may be changed.[14]

An Oregon property owner petitioned the district boundary board to have his real property transferred from one school district to another pursuant to state statute. The transfer was denied and the plaintiff property owner appealed to the Oregon Court of Appeals. That court held that the board's decision was apparently based upon the testimony given by the superintendent, which was not included in the record. As a result the court found that there was not substantial evidence in the record to support the board's finding and that it was not clear from the record that the board had applied the statutorily mandated criteria. The case was remanded to the board for application of the appropriation criteria and a more complete and reviewable record.[15]

7.3 SCHOOL BOND REFERENDA

A resident citizen and taxpayer in a Texas school district brought suit to enjoin the expenditure of bond issue proceeds voted for a specific purpose. The state court of appeals reversed the district court decision dismissing the suit for lack of standing.

13. Schumaker v. Canova School Dist. No. 48-1, 322 N.W.2d 869 (S.D. 1982).
14. San Diego Indep. School Dist. v. Central Educ. Agency, 634 S.W.2d 50 (Tex. Civ. App. 1982).
15. Messer v. Polk Cty. Dist. Boundary Bd., 646 P.2d 1369 (Or. Ct. App. 1982).

The appellate court found that wher the voters have passed a bond relying upon a pledge the proceeds would go to a certain project, an injunction may be issued to prevent other use of the proceeds. This rule applies where the pledge is to purchase a particular site for the project and officials attempt to purchase another site. Regarding the plaintiff's standing, the court found that his status as either a resident taxpayer in a governmental district or a resident citizen of such district entitles him to bring suit to enjoin illegal expenditure of public funds.[16]

Plaintiff taxpayers sued a Texas school district to have a bond issue declared invalid. The trial court granted the school district's motion to require the taxpayers to post a bond to insure payment of any damages caused by the delay. When they failed to post the required bond, the district court affirmed the trial court decision, reversing the court of civil appeals decision.

The Texas Supreme Court held that the statutory requirements of such a bond and the authorization of dismissal of suit upon failure to post the bond, did not deny the taxpayers due process nor a right to trial by jury. The right to proceed with such a suit was found not to prevent taxpayers from assuming liability for damages caused by delay if the suit is proven unfounded.[17]

7.4 ZONING ISSUES

A Texas school district attempted to locate its bus-parking facilities within an area zoned residential. The city objected and refused to issue a required building permit on the basis of noncompliance with the zoning ordinance and an applicable nuisance ordinance.

The court of appeals affirmed the district court decision, referring to Texas Supreme Court precedent holding that school district authority predominates over the zoning authority of a municiplaity unless there is an unreasonable exercise of power or nuisance. The court went on to say that the authorized acts of a school district cannot be nuisances per se, nor may they be declared to be nuisances by the city. The remaining issue was whether the activity, which though not by its nature a nuisance, became so by reason of its locality, surroundings, or in the manner it was conducted. This question was submitted to jury by the district court and was decided in the negative.[18]

16. Devorsky v. La Vega Indep. School Dist., 635 S.W.2d 904 (Tex. Ct. App. 1982).
17. Buckholts Indep. School Dist. v. Glaser, 632 S.W.2d 146 (Tex. 1982).
18. City of Addison v. Dallas, 632 S.W.2d 771 (Tex. Civ. App. 1982).

7.5 BUILDING DESIGN AND CONSTRUCTION

7.5a Competitive Bidding

In 1977, a contractors' association won a permanent injunction in United States district court against the San Francisco school board for requiring minority business enterprise participation to be awarded a construction contract. This was found necessary to prevent a violation of the state's competitive bid statute. In 1981, the board incorporated similar language in its standard bid documents, this time as a "goal" required of responsive bidders. The association promptly sought an order from the court finding the board in civil contempt for failing to comply with the injunction. Not only did the court find the board in contempt, it also required the board to pay the association's costs and attorneys' fees.[19]

The Supreme Court of Washington found that Ellensburg school district violated the state's competitive bid statute when it hired two teachers as custodians to repaint a junior high school.[20]

In California, the Panama union school district opened bids for construction of an elementary school. The low bidder then found a clerical error of $100,000 and the district board rejected the erroneous bid. When the project went out for bids five weeks later, the mistaken bidder was prohibited by state law from participating any further. Both the trial court and the court of appeals agreed that the rebid was barred.[21]

In Idaho, the Cassia and Twin Falls county school district improperly awarded a building contract "to a contractor who had listed a non-qualified mechanical subcontractor in its bid." The court of appeals ruled that the lowest responsible bidder was entitled to recover the cost of preparing its bid, but was not entitled to a reasonable profit margin.[22]

In New York, the supreme court, appellate division, refused to allow Syracuse to enforce a bid on the construction of a junior high school which contained a $191,700 error.[23]

Scheyd, Inc., high bidder on a construction contract with a Louisiana school district, attempted to amend its bid, which if effective, would have made it the low bidder. When the school district refused to

19. Associated General Contractors v. San Francisco U. fied School Dist., 544 F. Supp. 845 (N.D. Cal. 1982).
20. Painting and Decorating Contractors v. Ellensburg School Dist., 638 P.2d 1220 (Wash. 1982).
21. Colombo Constr. Co. v. Panama Union School Dist., 186 Cal. Rptr. 463 (Cal. Ct. App. 1982).
22. Neilsen and Co. v. Cassia and Twin Falls Cty., 647 P.2d 773 (Idaho 1982).
23. City of Syracuse v. Sarkisian Bros., 451 N.Y.S.2d 945 (N.Y. App. Div. 1982).

award the contract to Scheyd, the latter was granted an injunction to prevent the district from granting the contract to Waddell, the low bidder.

The state supreme court held that Scheyd's attempted amendment was ineffective and that pursuant to a state statute, Waddell could recover attorney's fee resulting from the necessity of defending against the injunction—even though Scheyd ultimately withdrew the injunction voluntarily. The court's rationale was that injunctions are harsh remedies subject to potential misuse and the statute imposes on a party who improperly uses such an order, the responsibility to redress all damages, including attorney's fees connected with dissolution of the injunction.[24]

7.5b Construction Funding

In Nebraska, the Ord school board contracted for the construction of a high school addition to be "financed through a lease-purchase plan." A school district taxpayer sued the board to enjoin it from proceeding with its plan. Both the trial court and the Supreme Court of Nebraska ruled that the board was "authorized to enter into such a contract . . . ."[25]

The Pittsburgh school district sought two million dollars' reimbursement from the state department of education for construction of a junior high school addition. Because the district had failed to have the existing building appraised prior to construction of the addition, it was barred by the court from seeking reimbursement.[26]

7.5c Prevailing Wages

School construction has been the forum for much prevailing wage litigation the past few years.[27]

In Michigan, West Ottawa public schools challenged the state's prevailing wage law as an unconstitutional delegation of legislative power to the department of labor. The trial court agreed, but the court of appeals reversed. "The Legislature has declared as the policy of this state that construction workers on public projects are to be paid the equivalent of the union wage in the locality. The Department of Labor's determination of that prevailing wage does not amount to the setting of state policy."[28]

24. Scheyd, Inc. v. Jefferson Parish School Bd., 412 So. 2d 567 (La. 1982).
25. George v. Board of Educ., 313 N.W.2d 259 (Neb. 1981).
26. School Dist. v. Commonwealth, 437 A.2d 530 (Pa. Commw. Ct. 1981).
27. *See* S. Goldblatt and R. Wood, *Financing Educational Facility Construction: Prevailing Wage Litigation*, NOLPE SCHOOL LAW UPDATE—1982 (1982).
28. West Ottawa Pub. Schools v. Babcock, 309 N.W.2d 220 (Mich. Ct. App. 1981).

In New Jersey, the Teaneck board of education hired a mason for construction work on an auditorium and library. He brought an action against the board "on behalf of himself and others similarly situated to compel payment of the prevailing wage rate." The trial and appellate courts both concluded that "the Prevailing Wage Act is applicable only in favor of employees of contractors and subcontractors on public work projects and not in favor of permanent or temporary employees of public subdivisions which themselves undertake public work projects."[29]

7.5d Sales Tax on Materials

In Florida, builders of "relocatable classroom buildings" for the state department of education paid no sales tax on the materials used in the units. The state department of revenue, the trial court, and the Supreme Court of Florida considered the buildings to be "public works" within the meaning of the sales tax statute. Thus, the materials were taxable.[30]

7.5e Roofs and Ceilings

In New Jersey, the Cinnaminson school board sued the manufacturer of acoustical plaster containing asbestos installed in four schools' ceilings sixteen to twenty-one years earlier. As soon as the board discovered the potential health hazard, it had to remove and replace the plaster at substantial cost. On the manufacturer's motion for summary judgment, the United States district court ruled that the board's damages were recoverable on a theory of strict liability in tort, punitive damages were recoverable, and the six-year statute of limitations applied—measured from discovery of the danger.[31]

The Supreme Court of Virginia issued two roof case decisions the same day involving the Fairfax county school board. In the first, the court affirmed the trial court's ruling that the board's action against a roofing contractor was barred by a five-year statute of limitations, measured from the work's completion.[32] In the second, the court reversed the trial court, ruling that the board's action against another contractor on another school was not barred by the same statute, measured from issuance of the architect's certificate of final payment.[33]

29. Thomas v. Teaneck Bd. of Educ., 446 A.2d 547 (N.J. Super. Ct. App. Div. 1982).
30. Housing by Vogue v. Department of Revenue, 422 So. 2d 3 (Fla. 1982).
31. Cinnaminson Twp. Bd. of Educ. v. U.S. Gypsum Co., 552 F. Supp. 855 (D.N.J. 1982).
32. County School Bd. v. M.L. Whitlow, 286 S.E.2d 230 (Va. 1982).
33. County School Bd. v. A.A. Beiro Constr. Co., 286 S.E.2d 232 (Va. 1982).

In Florida, the Seminole county school board sued the architect for improper roof design and construction supervision on three schools, all requiring "extensive repairs and eventual replacement." The trial court ruled that the four-year statute of limitations applied and that "the School Board discovered or should have discovered the design defects in the roofs more than four years before it filed its lawsuits." The court of appeals reversed because reliance on the architect "may reasonably have prevented the Board from discovering the permanency of the alleged design defects earlier."[34]

In New York, the Tri-Valley central school board brought an action against the architect for professional malpractice on an elementary school roof design. The supreme court, appellate division, reversed the trial court, ruling that the board's action was not barred by a six-year statute of limitations when measured from issuance of the architect's certificate of final payment.[35]

In New York, the Elmira school district contracted for the construction of a swimming pool building "to be a showplace" whose "design was intentionally dramatic." The district, under severe time constraints, accepted "permanently discolored" roof beams even though their appearance was "central to the aesthetics of the architectural scheme." Both the trial court and the supreme court, appellate division, found the beam supplier liable for the full cost of replacement—ten times the cost of mere repair.[36]

The New York City board of education solicited bids on a roofing rehabilitation contract and the lowest bidder was disqualified seven months later. The second lowest bidder brought an action against the board when it awarded the work to another contractor. Although the board acknowledged its error, both the trial court and the supreme court, appellate division, dismissed the proceeding "since it became moot when the work on the contract had substantially been completed."[37]

7.5f Design and Performance

The Central school district board sued the architects for improper design of an irreversible heat-pump system for its new junior high school. The supreme court, appellate division, reversed the trial court's

34. School Bd. v. GAF Corp., 413 So. 2d 1208 (Fla. Dist. Ct. App. 1982).
35. Board of Educ. v. Celotex Corp., 451 N.Y.S.2d 290 (N.Y. App. Div. 1982).
36. City School Dist. v. McLane Constr. Co., 445 N.Y.S.2d 258 (N.Y. App. Div. 1981).
37. Bush Terminal Roofing and Contracting v. Board of Educ., 457 N.Y.S.2d 114 (N.Y. App. Div. 1982).

dismissal of the complaint, ruling that it was "for the jury to decide whether the architects' conduct in designing the system was improper. . . ."[38]

In Tennessee, the Anderson county board of education sued the architect and mechanical subcontractor on a high school construction project for "damages based on theories of breach of contract, breach of warranties, negligence and gross negligence." On the architect's motion to remove the case to United States district court based on diversity of citizenship, the court found that the board had been "damaged by a single wrong—the high school was not properly constructed. That two contracts are involved does not mean that the actions are separate and independent. [T]herefore, this case is not removable. . . ."[39]

In a Missouri high school construction suit, the court of appeals noted that "the case was presented, perhaps of necessity, in confounding detail." The unpaid asphalt supplier sued the surety on the prime contractor's performance and payment bond, with the surety impleading the prime contractor and a group of indemnitors who in turn impleaded the asphalt paving subcontractor. The court affirmed the trial court's finding that the surety was liable to the supplier and the prime contractor was liable to the surety for prematurely releasing final payment to the subcontractor.[40]

7.5g Contractor Claims

The Supreme Court of New Hampshire affirmed an award of direct damages, but reversed an award of consequential damages when the contractor brought an action against Londonderry school district for its balance due on a high school addition construction contract. Recovery was denied for the contractor's loss of its credit line and ability to obtain bonding because such damages "were not reasonably foreseeable at the time of the parties' contract."[41]

In Tennessee, a contractor brought an action against the Gibson county school board to recover $34,000 interest earned on the retainage withheld from periodic payments under a school building contract. The court of appeals reversed the trial court, ruling that the board was

38. Board of Educ. v. Hubber, 456 N.Y.S.2d 283 (N.Y. App. Div. 1982).
39. Anderson Cty. v. Goodstein, Hahn, Shorr & Assoc., 535 F. Supp. 269 (E.D. Tenn. 1982).
40. School Dist. v. Transamerica Ins. Co., 633 S.W.2d 238 (Mo. Ct. App. 1982).
41. Salem Engineering and Constr. Corp. v. Londonderry School Dist., 445 A.2d 1091 (N.H. 1982).

not required to hold the contractor's retainage in escrow and invest the money for the contractor's account.[42]

The Pennsylvania department of general services awarded a construction contract for improvements at the Laurelton state school. After completing the work, the contractor filed a complaint with the board of claims to recover extra costs incurred for resilient tile flooring not in the contract. The board granted the department's motion for judgment on the pleadings, but the commonwealth court reversed and remanded as a question of fact.[43]

The Colorado Seminary executed a new lease with a tenant who then contracted for the remodeling of its rented offices. When the tenant became insolvent, the contractor filed a mechanic's lien claim against the premises. Both the trial court and the court of appeals ruled that the premises had been properly posted and the seminary was not a party to the contract, so the seminary was not liable to the contractor on its claim.[44]

The installer of a gymnasium floor brought suit in an Arizona court to collect payment from a high school. The high school counterclaimed, alleging defective materials and unsatisfactory workmanship. The supreme court upheld the lower courts finding regarding an apportionment of damages which left the parties in the same position as they had been prior to the lawsuit.[45]

A North Carolina contractor appealed from a lower court decision in favor of the board of education on the contractor's claim for extra compensation. The contractor had a written contract with the defendant school district to perform subcontracting duties on a school building project. Because of substantial delays which were not the contractor's fault, there were substantially increased expenses which provided the basis for this suit.

In reversing and finding for the plaintiff construction company, the court of appeals held inapplicable the district's defenses. These defenses were based upon the contractor's failure to follow certain contractual procedures including (1) a failure to provide timely notice of a claim for increased costs; (2) a failure to obtain a change order forincreased compensation; and (3) a failure to submit the claim to arbitration. In addition, the court found that the contractor had not

42. Harrison Constr. Co. v. Gibson Cty. Bd. of Educ., 642 S.W.2d 148 (Tenn. Ct. App. 1982).
43. H. B. Alexander & Son v. Commonwealth, 443 A.2d 424 (Pa. Commw. Ct. 1982).
44. Uni-Build Corp. v. Colorado Seminary, 650 P.2d 1300 (Colo. Ct. App. 1982).
45. Marston's Inc. v. Roman Catholic Church of Phoenix, 644 P.2d 244 (Ariz. 1982).

waived his claim for extra compensation by accepting payment of the original contract price.[46]

7.5h Arbitration

In Oregon, the Union county school district entered into a contract for the construction of a school building. All disputes arising out of the contract were to be arbitrated. During construction, "part of the structure collapsed, causing death to one worker, injury to four others, and a delay in the project." Claims were settled for the death and personal injuries, but the contractor later sought to arbitrate its claims for delay damages and indemnification. For a number of reasons, the trial court agreed with the district that the dispute was not arbitrable. The court of appeals reversed, thus sending the matter to arbitration.[47]

In New York, the supreme court, appellate division, ruled that where a contractor failed to timely file notice of its claim in compliance with a provision of the state education law, its claim was totally barred, even as an offset against a school district claim.[48] In Pennsylvania, the superior court ruled that all issues arising from a school district's agreement with an electrical contractor were arbitrable as originally agreed.[49]

7.6 SCHOOL CLOSURES

In response to a financial crisis, the Cincinnati school board voted to close Peaslee primary school, a predominantly black school located in the central city. For the five previous years, the board had "sought and received the advice of the citizens of the school district with respect to school closings and consolidations." Nevertheless, parents of black and Appalachian students at Peaslee brought an action against the board to enjoin the school's closing, alleging denial of equal protection, discrimination on the bases of race and national origin, and abuse of discretion. The United States district court denied the parents' motion because they "failed to establish a likelihood of success on the merits."[50]

46. Triangle Air Conditioning, Inc. v. Caswell Cty. Bd. of Educ., 291 S.E.2d 808 (N.C. Ct. App. 1982).
47. Union Cty. School Dist. v. Valley Inland Pacific Constructors, 652 P.2d 349 (Or. Ct. App. 1982).
48. *In re* Florida Union Free School Dist., 445 N.Y.S.2d 15 (N.Y. App. Div. 1981).
49. Shamokin Area School Auth. v. Fairfield Co., 454 A.2d 126 (Pa. Super. Ct. 1982).
50. Bronson v. Board of Educ., 550 F. Supp. 941 (S.D. Ohio 1982).

In Kansas, the Shawnee Mission school board decided to close Antioch elementary school in response to declining enrollment. A school district resident, who was not allowed to vote in the referendum election held on the closure issue, filed a petition seeking declaratory judgment that the state's school closing statute was unconstitutional. The trial court held the statute unconstitutional in part "as violative of the 14th Amendment to the U.S. Constitution" because it permitted only those registered voters in the particular school's attendance area to vote on school closings. The Supreme Court of Kansas reversed. "When a special interest election is involved the traditional standard of equal protection analysis is utilized. Such a standard requires only that classifications bear some rational relationship to a legitimate state end. [W]e hold it does."[51]

In Minnesota, the Duluth school board adopted a long-range facilities plan under which Morgan Park would be changed from a high school to a junior high school. A group of civic organizations, taxpayers, and parents successfully brought suit to permanently enjoin the board's action. The Supreme Court of Minnesota reversed the trial court, holding that "the realignments of students among the several school buildings in the district, so that the Morgan Park building continues to be used as a school but for junior high pupils rather than for both junior and senior high pupils, constitutes administrative acts which are not subject to review. . . ."[52]

In California, a citizens' association challenged the Burlingame elementary school board's decision to close certain schools, basing its suit on a statute requiring prior "community involvement." Both the trial court and the court of appeals found the statute inapplicable, holding "the statutory directions concern acts to be taken before sale or lease of excess school property. Because the instant suit—on its face—relates to neither, summary judgment was proper."[53]

In Florida, the Palm Beach county school board ordered the closure of an elementary school "that had not been cost effective for years" and two students' parents appealed. The court of appeals affirmed the board's decision. "There is nothing in the record to show that the decision-making was clandestine or sinister, or that the public meetings were shells into which non-public decisions were poured, or that the ultimate decision was anything other than the result of bona fide town

51. Provance v. Shawnee Mission Unified School Dist., 648 P.2d 710 (Kan. 1982).
52. Western Area Business and Civic Club v. Duluth School Bd., 324 N.W.2d 361 (Minn. 1982).
53. Burlingame Citizens v. Burlingame Elem. School Dist., 185 Cal. Rptr. 306 (Cal. Ct. App. 1982).

meetings. [T]he ultimate decision appears to be the result of the board's concern for the quality of the children's education."[54]

In another Kansas case, the Marion county school board resolved to change the Florence attendance facility from grades kindergarten through eight by bussing grades three through five elsewhere. District patrons brought an action to enjoin the board from enforcing its resolution. The trial court granted the injunction, but the court of appeals reversed. "No consent is required from the resident electors to effectuate a change in use of an attendance facility, provided the school board contemplates continuance of any six elementary grades following the change."[55]

In Oregon, the Eugene school district voted to close Lincoln Community School, a central-city institution, for primarily fiscal reasons. A citizens' committee appealed the order of the land use board affirming the district's decision. The district cross-appealed the board's jurisdiction over its decision at all, and the court of appeals agreed. "The district board's decision was ... an exercise of the school board's responsibility for educational policy and basic district management. Whatever secondary effects the closure of the school might have on land use, the closure decision was not a land use decision."[56]

In New York, the Webster school bord decided to lease an elementary school to Xerox for five years with the option to renew. Although the school was the district's most modern facility, it had served as such only for two years beginning six years after completion. District resident taxpayers brought an action to review the board's decision. Both the trial court and the supreme court, appellate division, dismissed the petition against the board. "The decision to close the school and reassign its students to another school was a question involving the exercise of professional judgment in a school matter...."[57]

The New York City board of education declined to renew its four-year contract for educating handicapped students with Fairmont school due to financial mismanagement. The board then offered an alternative location for the majority of the students and sought placement for the rest. An affected student's parent brought suit to prohibit the school's closing. The supreme court found insufficient proof of the required irreparable injury to the students to warrant a stay.[58]

54 Cortese v. School Bd., 425 So. 2d 554 (Fla. Dist. Ct. App. 1982).
55 Linnens v. Christensen, 646 P.2d 1141 (Kan. Ct. App. 1982).
56. Westside Neighborhood Quality Project v. School Dist., 647 P.2d 962 (Or. Ct. App. 1982).
57 Foster v. Saylor, 447 N.Y.S.2d 75 (N.Y. App. Div. 1981).
58 Cohen v. Board of Educ., 454 N.Y.S.2d 630 (N.Y. Sup. Ct. 1982).

A New York board of education, after discussion in executive session, voted to sell two schools that were closed as a result of enrollment decline. Two legal issues were raised by the petitioners. The first issue involved whether or not the board of education was required by statute to submit the terms of the proposed sale to the school district voters for approval. The court reviewed the legislative history of the statute to determine that, under the facts of this case, the board of education may sell any real property without referendum. The second issue was whether or not the board of education violated the open meetings statute in discussing the proposed sale and its conditions and terms in executive session. The statute allows executive sessions for the purpose of the sale or lease of real property where publicity would affect the value of the property. The court, without discussion, held that the facts support the board of education and that the open meetings law was not violated.[59]

7.7 HIGHER EDUCATION

In furtherance of a prime contract with the United States Department of Energy, the University of California subcontracted for the installation of a fire sprinkling system in two lab buildings. The subcontractor brought a diversity action against the university for breach of contract and the university moved to dismiss or stay pending compliance with the standard federal dispute resolution clause. The United States district court stayed the action, ruling that the subcontractor was "not entitled to seek relief in this court until it has complied with the contract's arbitration clause."[60]

Arizona taxpayers sought to enjoin expenditures by the board of regents for the installation of a new auditorium sound system. Money spent on the system originated from student fees; such funds were not "state money." Therefore both the trial court and the Supreme Court of Arizona found the taxpayers to lack standing.[61]

In Alabama, Jacksonville State University contracted for the construction of a military science building. A dispute over the contract arose and the university brought a declaratory judgment action against the contractor to establish its right to escrowed retainage funds. The supreme court reversed the trial court in ruling that the contractor was entitled to a jury trial.[62]

59. Botwin v. Board of Educ., 451 N.Y.S.2d 577 (N.Y. Sup. Ct. 1982).
60. Grinnell Fire Protection Systems Co. v. Regents of Univ. of Calif., 554 F. Supp. 495 (N.D. Cal. 1982).
61. Grant v. Board of Regents, 652 P.2d 1374 (Ariz. 1982).
62. *Ex parte* Rush, 419 So. 2d 1388 (Ala. 1982).

In Missouri, Washington University sought condemnation of a landowner's property to expand its medical center. The landowner moved to dismiss the case for lack of jurisdiction and the university moved to enforce a settlement agreement between the parties. Both the trial court and the court of appeals agreed with the university.[63]

A student at the University of South Dakota brought a personal injury action against the state and the architect for negligent design of a dormitory stairwell railing some fourteen years earlier. The Supreme Court of South Dakota affirmed the trial court's ruling that the action was barred by a six-year statute of limitations when measured from the work's completion.[64]

A student was injured at the State University of New York at Albany when, at the entrance to a covered walkway connecting two buildings, she fell down stairs that were directly behind the doors. The trial court dismissed her personal injury suit against the state, but the supreme court, appellate division, reversed. "The uncontroverted expert proof is that it has always been considered to be a violation of acceptable engineering principles of good building design and construction, and hazardous and unsafe to have a door swing outward and over stairs."[65]

63. Washington Univ. Medical Center v. Komen, 637 S.W.2d 51 (Mo. Ct. App. 1982).
64. McMacken v. State, 320 N.W.2d 131 (S.D. 1982).
65. Burton v. State, 456 N.Y.S.2d 128 (N.Y. App. Div. 1982).